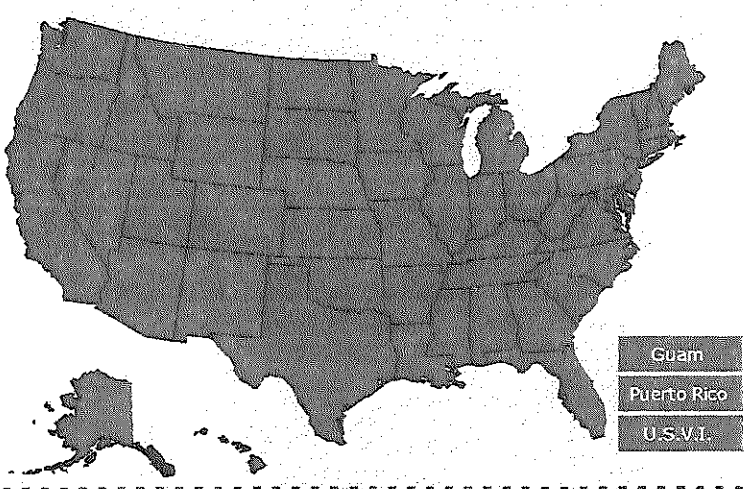
#14

PSYPACT Advancing the Interjurisdictional Practice of Psychology

Created by the Association of State and Provincial Psychology Boards (ASPPB), the Psychology Interjurisdictional Compact (PSYPACT) is an interstate compact that facilitates the practice of psychology using telecommunications technologies (telepsychology) and/or temporary in-person, face-to-face psychological practice.

About PSYPACT

- PSYPACT is a cooperative agreement enacted into law by participating states
- Addresses increased demand to provide/receive psychological services via electronic means (telepsychology)
- Authorizes both telepsychology and temporary in-person, face-to-face practice of psychology across state lines in PSYPACT states
- PSYPACT states have the ability to regulate telepsychology and temporary in-person, face-to-face practice



How PSYPACT Works

PSYPACT becomes operational when seven states enact PSYPACT into law

Psychologists who wish to practice under PSYPACT obtain:

- E.Passport Certificate for telepsychology
- Interjurisdictional Practice Certificate (IPC) for temporary in-person, face-to-face practice

PSYPACT states communicate and exchange information including verification of licensure and disciplinary sanctions

Benefits of PSYPACT

- Increases client/patient access to care
- Facilitates continuity of care when client/patient relocates, travels, etc.
- Certifies that psychologists have met acceptable standards of practice
- Promotes cooperation between PSYPACT states in the areas of licensure and regulation
- Offers a higher degree of consumer protection across state lines

How PSYPACT Impacts Psychologists

- Allows licensed psychologists to practice telepsychology and/or conduct temporary in-person, face-to-face practice across state lines without having to become licensed in additional PSYPACT states
- Permits psychologists to provide services to populations currently underserved or geographically isolated
- Standardizes time allowances for temporary practice regulations in PSYPACT states

EMAIL: info@psypact.org WEBSITE: www.psypact.org SOCIAL: @PSYPACT

Select Language

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PSYPACT

Quick Links

Model Legislation

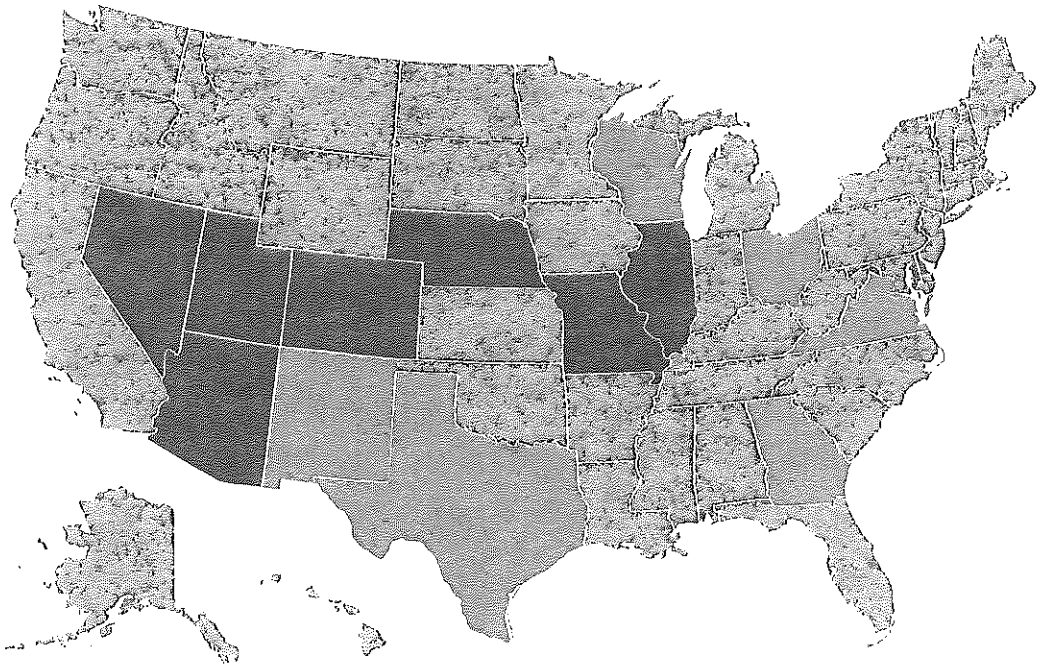
Legislative Resource Kit

Apply for the E.Passport/IPC - Coming Soon!

Sign up for the PSYPACT Listserv

Contact a Licensing Board

LEGISLATIVE UPDATES



DC

Guam

Puerto Rico

U.S. Virgin Islands

Map Key

PSYPACT State

States with Pending PSYPACT Legislation

Endorsed by Psychology Licensing Board

Arizona – AZ HB 2503 (Enacted on 5/17/2016)
Nevada - NV AB 429 (Enacted on 5/26/2017)
Utah - UT SB 106 (Enacted on 3/17/2017)
Colorado - CO HB 1017 (Enacted 4/12/2018)
Nebraska - NE L 1034 (Enacted 4/23/2018)
Missouri - MO HB 1719/MO SB 660 (Enacted 6/1/2018)
Illinois - IL HB 1853 (Enacted 8/22/2018 - *Effective 1/1/2020)

Code of Conduct and Conflict of Interest Policy for Use By State Authority, Board, Commission, and Committee Members

Purpose

The purpose of this code of conduct and conflict of interest policy ("Code") is to establish a set of minimum ethical principles and guidelines for members of state authorities, boards, commissions, or committees when acting within their official public service capacity. With the exception of those under the purview of the Unified Judicial System, this Code applies to all appointed and elected members of state authorities, boards, commissions, and committees (hereinafter "Boards" and "Board member(s)"). A Board may add provisions to, or modify the provisions of, the Code. However, any change that constitutes a substantive omission from the Code must be approved by the State Board of Internal Control.

Conflict of Interest for Board Members

Board members may be subject to statutory restrictions specific to their Boards found in state and federal laws, rules and regulations. Those restrictions are beyond the scope of this Code. Board members should contact their appointing authority or the attorney for the Board for information regarding restrictions specific to their Board.

General Restrictions on Participation in Board Actions

A conflict of interest exists when a Board member has an interest in a matter that is different from the interest of members of the general public. Examples of circumstances which may create a conflict of interest include a personal or pecuniary interest in the matter or an existing or potential employment relationship with a party involved in the proceeding.

Whether or not a conflict of interest requires a Board member to abstain from participation in an official action of the Board depends upon the type of action involved. A Board's official actions are administrative, quasi-judicial or quasi-legislative.

A quasi-judicial official action is particular and immediate in effect, such as a review of an application for a license or permit. In order to participate in a quasi-judicial official action of the Board, a Board member must be disinterested and free from actual bias or an unacceptable risk of actual bias. A Board member must abstain from participation in the discussion and vote on a quasi-judicial official action of the Board if a reasonably-minded person could conclude that there is an unacceptable risk that the Board member has prejudged the matter or that the Board member's interest or relationship creates a potential to influence the member's impartiality.

A quasi-legislative official action, also referred to as a regulatory action, is general and future in effect. An example is rule-making. If the official action involved is quasi-legislative in nature, the Board member is not required to abstain from participation in the discussion and vote on the action unless it is clear that the member has an unalterably closed mind on matters critical to the disposition of the action.

Administrative actions involve the day-to-day activities of the Board and include personnel, financing, contracting and other management actions. Most of the administrative official actions of a Board are done through the Board's administrative staff. To the extent Board members are involved, the conflict of interest concern most frequently arises in the area of state contracting which is addressed in more detail below. If issues arise that are not directly addressed by this Code, the Board member should consult with the attorney for the Board.

"Official action" means a decision, recommendation, approval, disapproval or other action which involves discretionary authority. A Board member who violates any of these restrictions may be subject to removal from the Board to which the member is appointed.

Contract Restrictions

There are federal and state laws, rules and regulations that address conflict of interest for elected and appointed Board members in the area of contracts. As an initial matter, a Board member may not solicit or accept any gift, favor, reward, or promise of reward, including any promise of future employment, in exchange for recommending, influencing or attempting to influence the award of or the terms of a state contract. This prohibition is absolute and cannot be waived.

Members of certain Boards are required to comply with additional conflict of interest provisions found in SDCL Chapter 3-23 and are required to make an annual disclosure of any contract in which they have or may have an interest or from which they derive a direct benefit. The restrictions apply for one year following the end of the Board member's term. The Boards impacted by these laws are enumerated within SDCL 3-23-10. For more information on these provisions, see the State Authorities/Boards/Commissions page in the Legal Resources section of the Attorney General's website at: http://atg.sd.gov/legal/opengovernment/authorityboardcommission.aspx.

Absent a waiver, certain Board members are further prohibited from deriving a direct benefit from a contract with an outside entity if the Board member had substantial involvement in recommending, awarding, or administering the contract or if the Board member supervised another state officer or employee who approved, awarded or administered the contract. With the exception of employment contracts, the foregoing prohibition applies for one year following the end of the Board member's term. However, the foregoing prohibition does not apply to Board members who serve without compensation or who are only paid a per diem. See SDCL 5-18A-17 to 5-18A-17.6. For more information on these restrictions see the Conflict of Interest Waiver Instructions and Form on the South Dakota Bureau of Human Resources website at: http://bhr.sd.gov/forms/.

Other federal and state laws, rules and regulations may apply to specific Boards. For general questions regarding the applicability of SDCL Chapter 3-23 or other laws, a Board member may

contact the attorney for the Board. However, because the attorney for the Board does not represent the Board member in his or her individual capacity, a Board member should contact a private attorney if the member has questions as to how the conflict of interest laws apply to the Board member's own interests and contracts.

Consequences of Violations of Conflict of Interest Laws

A contract entered into in violation of conflict of interest laws is voidable and any benefit received by the Board member is subject to disgorgement. In addition, a Board member who violates conflict of interest laws may be removed from the Board and may be subject to criminal prosecution. For example, a Board member may be prosecuted for theft if the member knowingly uses funds or property entrusted to the member in violation of public trust and the use resulted in a direct financial benefit to the member. See SDCL 3-16-7, 5-18A-17.4, and 22-30-46.

Retaliation for Reporting

A Board cannot dismiss, suspend, demote, decrease the compensation of, or take any other retaliatory action against an employee because the employee reports, in good faith, a violation or suspected violation of a law or rule, an abuse of funds or abuse of authority, a substantial and specific danger to public health or safety, or a direct criminal conflict of interest, unless the report is specifically prohibited by law. SDCL 3-16-9 & 3-16-10.

Board members will not engage in retaliatory treatment of an individual because the individual reports harassment, opposes discrimination, participates in the complaint process, or provides information related to a complaint. See SDCL 20-13-26.

Anti-Harassment/Discrimination Policy

While acting within their official capacity, Board members will not engage in harassment or discriminatory or offensive behavior based on race, color, creed, religion, national origin, sex, pregnancy, age, ancestry, genetic information, disability or any other legally protected status or characteristic.

Harassment includes conduct that creates a hostile work environment for an employee or another Board member. This prohibition against harassment and discrimination also encompasses sexual harassment. Sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexually harassing nature, when: (1) submission to or rejection of the harassment is made either explicitly or implicitly the basis of or a condition of employment, appointment, or a favorable or unfavorable action by the Board member; or (2) the harassment has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Harassment or discriminatory or offensive behavior may take different forms and may be verbal, nonverbal, or physical in nature. To aid Board members in identifying inappropriate conduct, the following examples of harassment or discriminatory or offensive behavior are provided:

- Unwelcome physical contact such as kissing, fondling, hugging, or touching;

- Demands for sexual favors; sexual innuendoes, suggestive comments, jokes of a sexual nature, sexist put-downs, or sexual remarks about a person's body; sexual propositions, or persistent unwanted courting;
- Swearing, offensive gestures, or graphic language made because of a person's race, color, religion, national origin, sex, age or disability;
- Slurs, jokes, or derogatory remarks, email, or other communications relating to race, color, religion, national origin, sex, age, or disability; or
- Calendars, posters, pictures, drawings, displays, cartoons, images, lists, e-mails, or computer activity that reflects disparagingly upon race, color, religion, national origin, sex, age or disability.

The above cited examples are not intended to be all-inclusive.

A Board member who is in violation of this policy may be subject to removal from the Board.

Confidential Information

Except as otherwise required by law, Board members shall not disclose confidential information acquired during the course of their official duties. In addition, members are prohibited from the use of confidential information for personal gain.

Reporting of Violations

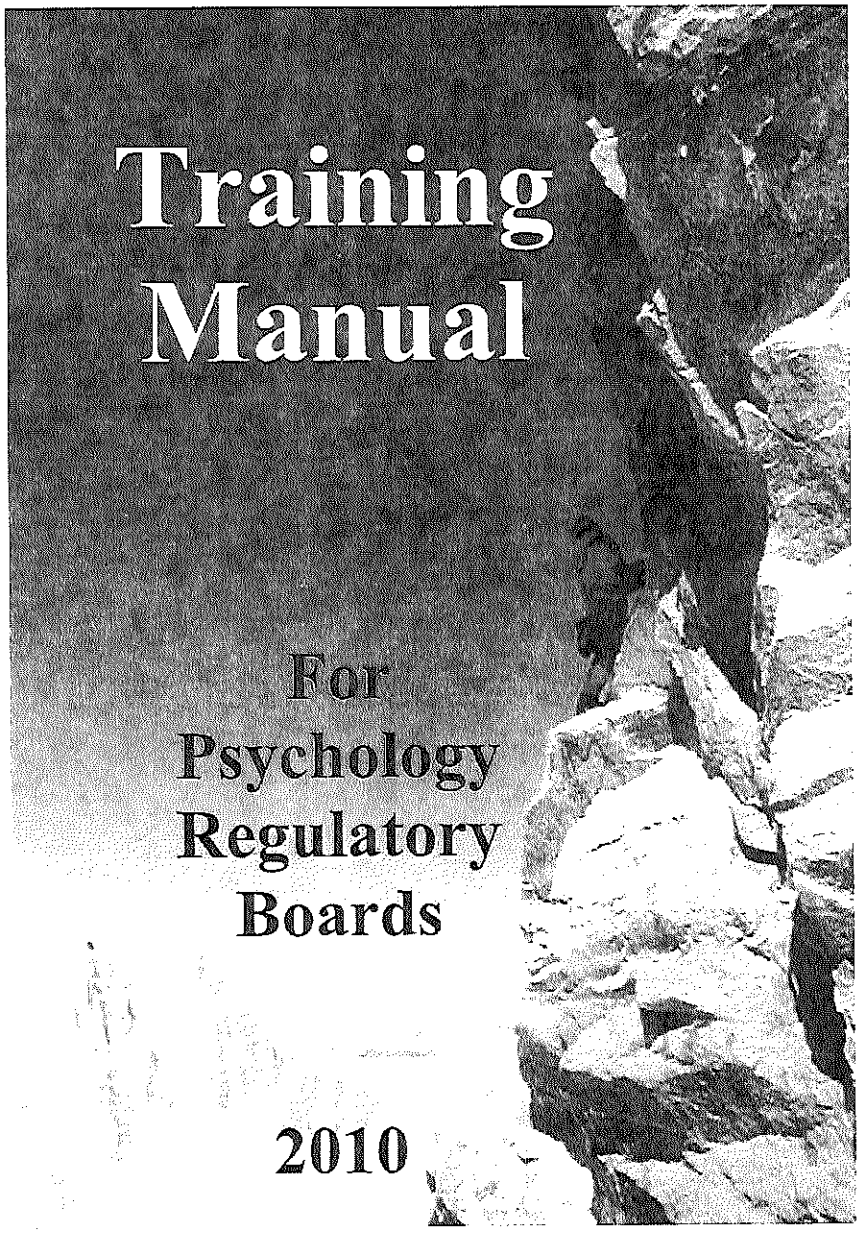
Any violation of this Code should be reported to the appointing authority for the Board member who is alleged to have violated the Code.

This Code of Conduct and Conflict of Interest Policy was adopted by the State Board of Internal Control pursuant to SDCL § 1-56-6.

#16

ASPPB

Association of State & Provincial Psychology Boards



Training Manual

For Psychology Regulatory Boards

2010

Title **Page**

Someone other than the board's chair or administrator should be in charge of leading the training session and should begin her/his responsibilities at this point, starting with a review of any other written materials prepared for the training session.

Resources Professional Regulators Will Need

A good professional regulator has to learn a great deal about state/provincial government in a short period of time. Over the years significant standardization has occurred and there are a number of identifiable documents that every regulator needs to read regardless of the jurisdiction he/she serves. Those include:

1. U.S., Canadian Federal, State, Provincial Constitutions
2. The enabling statute that creates this board
3. The rules and regulations by which the board operates
4. The jurisdiction's Administrative Procedure Act (APA)
5. The jurisdiction's Open Meetings Law
6. The jurisdiction's Public Information Act
7. The jurisdiction's Ethics Law
8. Attorney General's Opinions; Executive Orders
9. Any other statute local counsel suggests adding to this manual

There are other resources that some boards will need depending on the size and scope of their responsibilities. Many of these documents are more pertinent to board administrators and staff than board members and typically involve personnel and/or employment matters.

Definitions

There are some words or terms that are used quite often when regulators discuss the tasks involved in regulating a profession. Some definitions might be helpful to new board members and staff persons. Those include:

Adjudication - A decision made by an administrative agency acting in a quasi-judicial capacity; the decision making process for an administrative agency.

Administrative Law -The body of law, both statutory and case law, that deals with the manner in which agencies operate.

Contested Case - A matter which an agency must deal with in a formal way, under the applicable provisions of the Administrative Procedure Act.

Jurisdiction - The legal authority by which an agency exerts its control over a licensee or a professional issue; a geographical and political entity such as a state, province or territory that is empowered to regulate professional activity to protect its citizens.

GENERAL RULES FOR BOARD MEMBERS

Appointments to Office

Board members are typically appointed to office by the executive branch of government, although other methods exist in some jurisdictions. Prospective board members should ascertain that they meet the statutory qualifications for appointment before accepting the appointment. It is very important that members continue to meet the requirements while serving in their official capacities. Failing to do so can result in challenges to official board actions and may result in liability. Once appointed, they should carry out any statutory mandates regarding the oath of office and filing of credentials.

Roles and Duties

The roles and duties of members of boards are typically defined in statutes and regulations. Members are expected to carry out these duties which typically include: assessing candidates' qualifications for certification and licensure, conducting hearings, adjudicating disciplinary matters, and adopting rules and regulations. These responsibilities are done with the goal of protecting public health, safety, and welfare. On occasion boards are required to cooperate with other state and federal agencies to enforce other laws and regulations.

Conflict of Interest

Board members are public officials and should conduct their public duties in a manner that avoids criticism and liability. Board members should not attempt to regulate economics of the profession through board activities. When acting as a board member, you should be both seen by others and comfortable within yourself that you can be impartial, reasonable and fair in your judgments and actions.

Much thought should be given to the advisability of being both a board member and an officer of a professional association at the same time, or a committee member of such association, if the association's activities could possibly influence decisions to be made as a board member. Participation simply as a member of an association should not be discouraged however. Remember, that problems are created most often by the appearance of impropriety rather than by actual misconduct.

Board members who perceive even a potential conflict of interest should act swiftly to resolve the conflict. This may mean resignation from an office or committee membership. In disciplinary matters before the board it may mean that a board member is recused, unless recusal would render adjudication impossible. Remember, sometimes it is only the appearance of impropriety that leads to serious problems.

Confidentiality

In the very beginning of a term, each board member should ascertain the types of information to which he/she is privy; i.e., what is confidential or privileged and what is public. Some documents and/or records of the agency are public and subject to public scrutiny.

CONDUCT OF BOARD MEETINGS

Every professional regulatory board holds meetings, but some meet much more often than others. Some suggestions regarding meetings may be helpful.

Notices

Many states and provinces have statutes that direct agencies to give public notice of the time and place that agency meetings are to be held. These legal mandates normally establish how the notice must be transmitted, and set out the necessary time frames. Agency staff should be responsible for knowing the applicable guidelines and complying with them.

PAUSE YOUR DISCUSSIONS AND HAVE STAFF OR COUNSEL DISTRIBUTE COPIES OF YOUR JURISDICTION'S OPEN MEETINGS LAWS AND COMMENT ON THE FOLLOWING:

1. What steps must be taken to advertise a board meeting? Are there exceptions to the general rule?

2. Who is allowed to attend board meetings? Are there any limitations on the attendance by media such as audio/visual recording devices?

3. Under what circumstances can a board meeting be closed to the public? Are these situations mandatory or can they be waived?

4. Are all disciplinary hearings open or closed meetings? And who decides, the agency or the respondent?

Quorum

Either statute or internal rules and regulations will establish the number of members that must be present for a board to conduct business. Usually a majority is required, but in some circumstances a lesser number may be legally sufficient. Minutes of the meetings should always reflect the presence of the appropriate number of members.

Responsibilities of the Chairperson

1. Recognize board members entitled to speak or propose motions. Note: some motions may be made while another member has the floor. Speaker must state the purpose of the interruption so the chair can rule on its validity.

2. Restate motions after they have been made, then open discussion. This ensures that everyone is clear about the action being debated and allows more time for the motion to be accurately recorded.

3. The majority vote decides the questions.

4. Any question which limits board members' rights of discussion or which changes the agreed order of business requires a ⅔ vote of the members present.

5. Any matter once decided cannot be brought up again at the same meeting, except by a motion to reconsider (see Motions, section 2 for procedure).

6. The simplest, clearest and most expeditious way is considered proper, so long as it does not violate the rights of board members.

Proposing and Disposing of a Motion

1. Gain floor by being recognized by chair.

2. State motion: "I move that...".

3. Motion is seconded by any member without gaining floor. (Second not required under Keesey's Modern Parliamentary Procedure)

4. Chair states motion (if proper) and opens it for discussion (if debatable).

5. During discussion the motion may be amended or disposed of by postponement (to a time certain or indefinitely), referred to a committee, or tabled.

6. The chair puts the motion to a vote when there is no further discussion.

7. The chair announces the outcome of the vote.

Motions

1. Motion To Take From Table: Requires second, majority vote, not debatable, not amendable.

   A. Purpose: To bring up for consideration an issue that has been laid on the table.

   B. Effect Of Adoption: Puts motion before board again in exactly the same condition as when laid on table.

2. Motion to Reconsider: Requires second, majority vote, debatable, not amendable.

   A. Purpose: To set aside a previous vote and reconsider the question for adoption or rejection.

C. Effect Of Adoption: Disposes of motion until committee reports back or is discharged by the board.

7. Motion To Postpone Definitely: Requires second, majority vote debatable, amendable.

A. Purpose: To put off action on a motion until a later time.

B. Form: Motion must specify time at which matter will be taken up again and may be amended in this regard.

C. Effect Of Adoption: Disposes of matter until time set.

8. Motion To Limit Debate Or Extend Limits: Requires second, ⅔ vote, not debatable, amendable.

A. Purpose: To regulate length of time a question may be discussed or length of time allotted to each speaker.

B. Form: Motion states limits and may be amended in this regard.

9. Motion On Previous Question: Requires second, ⅔ vote, not debatable, amendable.

A. Purpose: To have discussion ended immediately and a vote taken.

B. Form: May specify only the immediately pending question, of all pending questions.

C. Effect Of Adoption: Chair must immediately put question to a vote and allow no further discussion.

D. Note: This motion should not be confused with the call for the "question" which is only a suggestion that the board members are ready to vote, and may not be used to deprive any board member of the right to continue the discussion if desired.

10. Motion To Lay On The Table: Requires second, majority vote, not debatable, not amendable.

A. Purpose: To set a matter aside temporarily. May be moved after the previous question has been ordered.

B. Effect Of Adoption: Matter on table may be brought up again, but not later than the next meeting, by adoption of a main motion to take it off the table.

11. Motion Relating To Voting: Requires second, majority vote, not debatable, amendable.

A. Purpose: To provide a manner of voting (i.e., by ballot, voice, show of hands) order in which questions will be voted upon, appointment of tellers, etc.

C. Effect Of Adoption: chair must adjourn meeting immediately, although necessary announcements may be made and a motion to fix a time for the next meeting may be entertained.

17. Motion To Fix Time For Next Meeting: Requires second, majority vote, not debatable, amendable.

A. Purpose: To set time for next meeting (either regular or special).

B. Restrictions: Treated as a main motion if no other question pending or if provision has already been made for another meeting on this day or the next.

Minutes

Many state/territorial/provincial codes require agencies to keep minutes of their meetings. This is a serious mandate and should not be taken lightly. Strict adherence to laws and regulations pertaining to minutes is absolutely necessary. Some states/territories/provinces may also have filing requirements for agency minutes. The form and content of minutes are usually flexible, however they should contain a concise summary of the meeting and business conducted. By all means, make sure that authorizations for travel, or the expenditure of funds, are properly noted in the minutes of the meetings that precede such travel and/or expenditures.

Emergency Meetings

Most state/provincial notice requirements make provisions for "emergency" meetings. The agency will probably be required to state the reason for the "emergency" meeting within the notice that will also be required. Such meetings should only be called when an emergency does exist and delayed action would cause serious problems.

PAUSE YOUR DISCUSSIONS AND ASK COUNSEL IF THERE ARE STATUTES OR CASE LAW WITHIN YOUR JURISDICTION THAT OUTLINE WHAT CAN OR CAN'T BE DONE IN AN "EMERGENCY" SITUATION.

Notes:

RULEMAKING

One of the primary responsibilities of the professional regulatory board is the promulgation of rules to complement the enabling statute. Rulemaking can be laborious, but the process and the product are extremely important.

Virtually every statute that creates an agency to regulate any profession, allows the agency

Most APA's contain a provision that allows rules to be challenged in the same manner that contested cases are adjudicated. Should such a challenge be made, a fact-finding hearing may be necessary with an order issued by either a hearing officer or the Board. Rules properly adopted and within legal parameters should be upheld. Marchetti v. Alabama Bd. of Examiners in Psychology, 494 So.2d. 448 (Ala.Civ.App. 1986); Pukin v. New York State Department of Health, 649 N.Y.S. 2d 191 (A.D.3 Dept. 1996); Billings v. Wyoming Bd of Outfitters, 2001 WY 81 (2001).

Legislative Oversight

Please note that all APA's have a mechanism that allows the legislature or legislative committee to oversee the promulgation of agency rules. Most APA's require an agency to deliver copies of proposed rules to this committee. Given the large number of rules that are proposed each month there is a real question as to how much oversight is actually exercised. However, regular review of proposed rules is a typical assignment for lobbyists for special interest groups. Those individuals usually call legislative attention to rules their employees oppose.

Emergency Rulemaking

An emergency rule is one that is necessitated by a impending need or an immediate danger. These rules are normally limited to state or provincial action that is deemed necessary to protect the public health, safety, or welfare. The agency must be able to document both the danger and the need to act on an emergency basis.

Under most APA's, an emergency rule can only be in effect for a set period of time, i.e., 90 to 120 days. At the end of this period of time, the rule normally cannot be renewed. During the time the emergency rule is in effect, the agency can pursue the usual methods of rulemaking. Emergency rulemaking should not be exercised unless absolutely necessary.

Notes:

NONCOMPLIANCE ISSUES

Alabama has a training manual for the state regulatory boards and commissions. That manual sets out a number of frequent noncompliance issues. The manual explains: "a review of past legal compliance reports and sunset review reports, reveals that instances of noncompliance have a history of repeating." Department of Examiners of Public Accounts, Training Manual for Alabama Regulatory Boards and Commissions, 1st Ed. April 2002. The following is a list of the most common noncompliance issues set out in the manual:

Noncompliance with submission of property inventory listings to the State Auditor's Office as required.

Failure to send annual reports to the Governor and/or other officials.

Failure to establish a recycling program

Each board member should satisfy himself/herself that the methods used to assess qualifications for initial licensure are rigorous enough to protect the public and at the same time altogether fair to the applicant. It should be noted that at this point in time, due to the passage of the Americans With Disabilities Act, there is an ongoing legal debate regarding the ability of boards to inquire into applicants past problems with alcohol, drugs and/or emotional or mental illness.

PAUSE YOUR DISCUSSIONS AND ASK COUNSEL TO PROVIDE THE PARTICIPANTS WITH THE LATEST ON THE AMERICANS WITH DISABILITIES ACT AND APPLICATIONS FOR AN INITIAL LICENSE.

Notes:

Informal Resolution of Complaints

Every administrative procedure act recognizes the fact that not every complaint or dispute involving a regulatory board requires the formal process that results in a hearing under the contested case provisions of the act. Consequently, each APA contains a method by which these matters can be settled informally.

In many ways the word informal is a poor one. Complaints settled informally still involve legal documents that outline rights and responsibilities and contain appropriate waivers. Some APA's refer to settlement by stipulation, consent order or similar words or phrases.

Most informal resolutions involve allegations of professional misconduct. However, some such resolutions involve applicants that are licensed on probation due to prior problems with drugs, alcohol or other chemical substances.

PAUSE YOUR DISCUSSIONS AND ASK COUNSEL TO DETAIL THE STEPS LEADING TO THE INFORMAL SETTLEMENT OF A COMPLAINT AND TO USE SAMPLES OF LEGAL DOCUMENTS TO ILLUSTRATE THESE COMMENTS:

Notes:

AGENCY AND THE EXECUTIVE BRANCH OF GOVERNMENT

A professional regulatory board is an agency that operates within the executive branch of government. It has a relationship with the legislative and judicial branches, but also with other agencies within the executive branch.

Relationship to Other Executive Agencies

Any professional regulatory board is only one of numerous state/provincial agencies; it has to operate in cooperation with certain other agencies. For example, the board's primary counsel will undoubtedly be the Attorney General. A good working relationship with the staff of that agency is critical.

The need to cooperate with other agencies can be said of several other agencies such as the State Auditor's Office, the Examiners of Public Accounts, the Secretary of State, and the Legislative Fiscal Office. Board members and staff should know and understand the inter-relationship between the agencies and strive toward a successful, collaborative relationship.

Attorney General: In many jurisdictions, an Assistant Attorney General will be assigned to represent the board. A good working relationship is crucial. Often important opinions on legal issues will be requested from the Attorney General; the content can be most critical.

Auditors: Virtually every jurisdiction will be audited at least annually by the appropriate state/provincial auditors or examiners of public accounts. Board members should closely supervise staff functions involving governmental funds.

Budgetary Process: There is considerable variance in how boards receive their annual funding. Some receive an annual appropriation from their state/provincial legislature; other boards have access to the funds generated from renewals, application fees, and exam fees.

Ethics Commission: Many jurisdictions have ethics laws that relate to the activities of board members and public employees. If such statutes, particularly those involving use of public monies and/or equipment are violated, reports must be made to the appropriate individuals or entities.

PAUSE YOUR DISCUSSIONS AND HAVE STAFF EXPLAIN THE BOARD'S RELATIONSHIP TO OTHER EXECUTIVE AGENCIES.

Notes:

Most board members are terribly naive about legislative matters. They tend to think that because their particular bill is meritorious that it should pass without objection. They fail to understand that just because they care about a change in licensing law does not mean that anyone else will care, particularly a state, territorial or provincial legislator. Therein lies the key to successful passage of bills. Without a sponsor who is dedicated to working a bill through to final passage, the measure is probably doomed. Simply agreeing to sponsor a bill, for most legislators, means very little and you should understand that early on.

Most legislators do understand the word commitment, but alas, most board members do not. If involved in legislative activity, don't assume anything. If a legislator commits to vote for a bill in committee, don't assume she'll vote for it on the floor. Ask her and see. Get her full commitment or find out why she's not willing to give you that.

Whatever you do, don't ignore the leadership. A bill that matters to only a few people has very little chance generally, but if it matters to the Speaker or Lt. Governor, its chances improve measurably. Of course, the Governor must be considered also. In most states, he/she has veto power requiring an overriding vote of both chambers. The Governor also has the authority to attach executive amendments which could aid or destroy your efforts so his/her office should not be ignored.

PAUSE YOUR GENERAL DISCUSSIONS AND ASK STAFF TO REVIEW ANY KNOWN LEGISLATION YOUR BOARD WILL BE ASKED TO RESPOND TO IN THE IMMEDIATE FUTURE.

Notes:

Sunset Review

Sunset legislation is currently in existence in thirty-plus states of the United States. Statutes vary in form but almost all require automatic termination of state administrative boards and agencies unless the state legislature votes to continue their existence. Normally, a board is notified well in advance of its termination date and informed as to the review procedure. Moreover, it has happened that administrative agencies have not been notified in sufficient time to prepare adequately for sunset review. Consequently, all boards should immediately determine when their sunset review date is and begin to prepare for that review.

Perhaps the most important part of Sunset Review is understanding the legislature and the sunset review process. First, it is extremely political in nature as most legislators view sunset as a way of making points with the electorate by reducing state government. To be successful in sunset review, board members have to become politically aware, if not politically active. To do

3. A board should be prepared to explain questions relative to limiting competition and should be prepared to answer questions regarding application denials and the reasons for such. It should be prepared to explain the standards for licensure; any uniformity that it can point to with the neighboring states would be helpful. Additionally, each board should be prepared to explain any exemptions in the law and the pros and cons of such exemptions. Knowledge of the board's own practice act is imperative, and the board's spokespersons should be prepared to explain all of its rules and regulations and any prohibitions that it may have on advertising, corporate practice or the like. Information on any disciplinary actions which can be released should be released as evidence of the board's on-going efforts to protect the public. Be cautious in this regard lest you release something that is privileged information.

4. Each board must know its opposition. If allied professions have previously sought licensure status and been unsuccessful in that regard, they may view sunset as a way of accomplishing their goal in another manner. If there have been extensive conflicts with other professions, then the board should be prepared to defend the stand it took. A board would be well advised to consult with the staff of the sunset committee in advance of its hearing to determine if any witnesses are going to appear from out-of-state. It is not unlikely that some member of a consumer group or other individuals will be prepared to appear at a sunset hearing and speak against the continuation of the board.

5. The question of whether a board could/should be merged with another board is likely to come up. Those members present for sunset review should be able to explain what effect it would have on the quality of services if the board is merged with another board and what problems could arise.

6. Each board should be prepared to justify and explain its budget in detail. If its funds are separate and distinct from the state's General Fund, a justification should be ready. If the board is responsible for continuing education and is pursuing its implementation actively, this can be an important point to make during sunset review.

7. One potential point of concern is the question of equal employment opportunities. The board should have some facts and figures readily available on the number of minority applicants, the number licensed and the number refused, as well as, the reason for refusing these applicants.

8. The board should be prepared to explain and defend its application and exam procedures. If complaints have been received about the length of time required for processing and the number of individuals refused or having failed the exam, sufficient explanation should be prepared well in advance of the sunset hearing.

9. Spokespersons for the board should also be prepared to explain, and if necessary to defend, expenditures for out-of-state travel.
A few "Do's" and "Don'ts" might be of some help:

Things to DO in regard to your actual sunset hearing:

1. Criteria And Standards:

A. A profession or occupation shall be regulated by the state only when:

(a) It can be demonstrated that the unregulated practice of the profession or occupation can clearly harm or endanger the health, safety or welfare of the public, and the potential for the harm is recognizable and not remote or speculative.
(b) The public can reasonably be expected to benefit from an assurance of initial continuing professional ability.
(c) The public cannot be effectively protected by other means.

B. After evaluating the criteria in subsection A of this section and considering governmental and societal costs and benefits, if the legislature finds that it is necessary to regulate a profession or occupation, the least restrictive method of regulation shall be imposed, consistent with the public interest and this section:

(a) If existing common law and statutory civil remedies and criminal sanctions are insufficient to reduce or eliminate existing harm, regulation should occur through enactment of stronger civil remedies and criminal sanctions.
(b) If a professional or occupational service involves a threat to the public and the service is performed primarily through business entities or facilities that are not regulated, the business entity or the facility should be regulated rather than its employee practitioners.
(c) If the threat to the public health, safety or welfare including economic welfare is relatively small, regulation should be through a system of registration.
(d) If the consumer may have a substantial interest in relying on the qualifications of the practitioner, regulation should be through a system of certification.
(e) If it is apparent that the public cannot be adequately protected by any other means, a system of licensure should be imposed.

C. Any of the issues set forth in subsections 1A and 1B of this section and section 2 below may be considered in terms of their application to professions and occupations generally.

2. Information Requested: Prior to review under this chapter and prior to consideration by the legislature of any bill which proposes to regulate a profession or occupation, the profession or occupation being reviewed or seeking regulation shall explain each of the following factors:

A. Why regulation is necessary including:

(a) The nature of the potential harm or threat to the public if the profession or occupation is not regulated.
(b) Specific examples of the harm or threat identified in subsection (a).
(c) The extent to which consumers will benefit from a method of regulation which permits identification of competent practitioners, indicating typical

entry or methods of satisfying the eligibility requirements and qualifications; whether all applicants will be required to pass an examination; and, if an examination is required, by whom it will be developed and how the costs of development will be met.

F. The form and powers of the regulatory entity including:

(a) Whether the regulatory entity is or would be a board composed of members of the profession or occupation and public members, or a state agency, or both, and if appropriate, their respective responsibilities in administering the system of registration, certification or licensure.
(b) The composition of the board, if any, and the number of public members, if any.
(c) The powers and duties of the board of state agency regarding examinations.
(d) The system for receiving complaints and taking disciplinary action against practitioners.

G. The extent to which regulation might harm the public including:

(a) Whether regulation will restrict entry into the profession or occupation:
(1) Whether the standards are the least restrictive necessary to insure safe and effective performance.
(2) Whether persons who are registered, certified or licensed in a jurisdiction which the board or agency believes has requirements that are substantially equivalent to those of this state will be eligible for endorsement or some form of reciprocity.
(b) Whether there are similar professions or occupations which should be included, or portions of the profession or occupation which should be excluded from regulation.

H. How the standards of the profession or occupation will be maintained:

(a) Whether effective quality assurance standards exist in the profession or occupation, such as legal requirements associated with specific programs that define or enforce standards, or a code of ethics.
(b) How the proposed form of regulation will assure quality:
(1) The extent to which a code of ethics, if any, will be adopted.
(2) The grounds for suspension, revocation, or refusal to renew registration, certification or licensure.

I. A profile of the practitioners in this state, including a list of associations, organizations, and other groups representing the practitioners including an estimate of the number of practitions in each group.

J. The effect that registration, certification or licensure will have on the costs of the services to the public.

theoretically there are no surprises at the time of trial. This is done in an effort to more equitably serve the rights of the parties. During the discovery each side may utilize various techniques designed to uncover facts and expose weaknesses and strengths of the respective parties.

The two most important tools in discovery are written interrogatories and depositions. Written interrogatories are questions propounded to parties which they are required to answer under oath. This is the least expensive form of discovery, but can only be served on other parties. A deposition may be utilized with parties and other witnesses. A deposition is basically a question and answer session involving the prospective witness, counsel for both sides and a court reporter who takes the sworn testimony of the deponent. This discovery tool is used not only to discover the alleged facts of the case, but to preserve testimony which may be used at trial if the witness is unavailable and to observe the demeanor of the potential witness.

Should you ever have to answer interrogatories, you will be able to utilize the assistance of counsel in formulating responses. They are questions which must be answered truthfully, and the individual answering the question must so affirm or swear as to their truthfulness. A deposition can be a very effective tool for a litigant since it allows a party to assess the witness' ability to testify, and it provides a fertile ground for producing inconsistent statements that my prove to weaken that side's case. You should never let your deposition be taken without advising your attorney. It is a common ploy of many lawyers to initiate such a lawsuit against a party who will ultimately be dismissed from the case when other parties are added. In the meantime, the party filing the suit, prior to adding the additional parties, will already have noticed and taken the depositions of future parties who unknowingly submit to the deposition without the advice of their attorneys.

Discovery is the phase of the lawsuit which takes the longest period of time, and it can go on seemingly forever. It is expensive and time consuming, but it is an absolute necessity if a case is to be tried properly.

The next phase of litigation is the trial of the case itself. The party which filed the lawsuit has the burden of going forward with the evidence and proving its case by a preponderance of the evidence. Trials are basically of two types: jury trials and non-jury trials.

Compared to jury trials, non-jury trials are quick and relatively simple. The trial judge's responsibilities create the differences. In a jury trial, the judge must be very careful to shield the jury from inadmissible evidence. When a judge sits alone, he can simply disregard improper evidence; further, there is no necessity for written or oral jury charges. Everything has advantages and disadvantages though. So far as decision making goes, juries are much faster than judges, as cases can be taken under advisement for long periods of time.

A typical trial of either sort would begin with an opening statement from both plaintiff and defendant. This phase is for the purpose of advising the court or jury of what each side expects to prove from the evidence. This exchange is followed by the plaintiff's case in chief. Evidence is elicited through oral testimony and physical exhibits. Each side has, of course, the opportunity to cross-examine the other side's witnesses following its direct examination.

Liability

There are several types of liability which board members should be aware of. First is the liability of the board itself for injunctive relief. Basically there are two types of injunctive relief: mandatory or prohibitory. These are remedies requiring defendants to do or refrain from doing particular acts. In some states, other proceedings may be called by other names, such as writ or mandamus or prohibition, but the results are similar in nature.

Injunctive type relief in state court is the least troublesome type of liability since it lies directly against the agency and rarely involves damages or attorney's fees. Other types of liability -- for actual damages, for misconduct or violation of an individual's civil rights -- are far more intimidating. Of particular concern are the far reaching aspects of 42 U.S.C. §1983, et seq., which assess attorney fees almost automatically against unsuccessful litigants even if only injunctive relief has been secured.

A board member who cannot bear the threat of litigation needs to resign immediately for his/her own well-being and that of the board. Threats of lawsuits are commonplace, even everyday events for many boards. The handful of suits that do occur are vexious and time consuming. But, liability is not common. There are many defenses to such actions, particularly if the lawsuit involves the exercise of the board's adjudicative function. In fact, when exercising this function there is significant case law that holds that board members are absolutely immune from liability. Hicks v. Georgia Board of Pharmacy, 553 F.Supp. 314 (N.D.Ga. 1982); Bettencourt v. Board of Reg. in Medicine, 904 F.2d 772 (1st Cir.1990); Watts v. Burkhart, 978 F.2d 269 (6th Cir. 1992); O'Neal v. Mississippi Board of Nursing, 113 F.3d 62 (5th Cir. 1996); and Wang v. New Hampshire Board of Registration in Medicine, 55 F.3d 698 (1st Cir. 1995). But see also: Lapides v. Board of Regents, 122 S.Ct. 1640 (2002); Edwards v. Gerstein, 237 SW 3d 580 (MO.banc 2007).

Most state governments have insurance protection that extends to members of professional regulatory boards. However, staff is responsible for compliance with the various regulations that make this coverage available. Make sure these regulations are followed to the letter. Many jurisdictions have statutes that also provide immunity from civil liability to members of non-profit corporations and "other such boards and commissions". If a lawsuit occurs these statute(s) should not be overlooked.

Board members and staff should also seek competent advice regarding matters related to use of state equipment and reimbursement for travel expenses. Statutes and rules regarding anything involving state monies should be followed to the letter.

PAUSE YOUR DISCUSSIONS AND ASK COUNSEL TO DISCUSS ANY THOUGHTS REGARDING BOARD MEMBER LIABILITY IN YOUR JURISDICTION.

v. Voice of St. Matthews, 519 S.W.2d 811. (KY App. 1974).

Sunshine Laws (Open Meetings)

This particular type of law which could well be described as an open meeting law, had been enacted in all fifty (50) states of the Union before Congress passed the Federal Government in the Sunshine Act, 5 U.S.C. 552(b). The concept embodied in such laws includes the concept that publicity is a helpful preventive for many of the more common ills of those who govern the public. Sunshine Acts open agency meetings to the public and the press. Violation of such acts, for whatever reason, innocent or not, can prove costly and may result in the invalidation of actions taken at such meetings. Polillo v. Deane, 379 A.2d 211 (N.J. 1977). Invalidation is not the only result. Two others which come to mind are adverse publicity and possible repercussions during sunset hearings. Cantrell v. State Board of Registration, 26 S.W. 3d 824, (Mo. App.W.D. 2000); Commonwealth MA v. Bd. Selectmen Town, No. 062167C (Ma.Super. Oct. 30, 2006).

In order to conduct your board meetings properly, be sure to consult with counsel and have counsel extract the relevant Sunshine law from your state code. Make sure that your Executive Secretary is aware of any notice requirements within this statute and the manner in which such notice must be given.

At the same time, do not ignore the exceptions found in the Sunshine Act. Invariably there will be exceptions to the general rule which will allow for deliberations behind closed doors. There are ten (10) such categories in the federal statute, and while state statutes will probably not contain so many exceptions, you can be assured that such categories as the character or good name of an individual will be included in many such acts. Careful scrutiny of the act may avoid nasty litigation for defamation, libel or slander.

Robert's Rules of Order – An Introduction

What Is Parliamentary Procedure?

It is a set of rules for conduct at meetings that allows everyone to be heard and to make decisions without confusion.

Why is Parliamentary Procedure Important?

Because it's a time tested method of conducting business at meetings and public gatherings. It can be adapted to fit the needs of any organization. Today, Robert's Rules of Order newly revised is the basic handbook of operation for most clubs, organizations and other groups. So it's important that everyone know these basic rules!

Organizations using parliamentary procedure usually follow a fixed order of business. Below is a typical example:

1. Call to order.
2. Roll call of members present.
3. Reading of minutes of last meeting.
4. Officer's reports.
5. Committee reports.
6. Special orders --- Important business previously designated for consideration at this meeting.
7. Unfinished business.
8. New business.
9. Announcements.
10. Adjournment.

The method used by members to express themselves is in the form of moving motions. A motion is a proposal that the entire membership take action or a stand on an issue. Individual members can:

1. Call to order.
2. Second motions.
3. Debate motions.
4. Vote on motions.

There are four Basic Types of Motions:

1. **Main Motions:** The purpose of a main motion is to introduce items to the membership for their consideration. They cannot be made when any other motion is on the floor, and yield to privileged, subsidiary, and incidental motions.
2. **Subsidiary Motions:** Their purpose is to change or affect how a main motion is handled, and is voted on before a main motion.
3. **Privileged Motions:** Their purpose is to bring up items that are urgent about special or important matters unrelated to pending business.
4. **Incidental Motions:** Their purpose is to provide a means of questioning procedure concerning other motions and must be considered before the other motion.

How are Motions Presented?

1. **Obtaining the floor**
    a. Wait until the last speaker has finished.
    b. Rise and address the Chairman by saying, "Mr. Chairman, or Mr. President."
    c. Wait until the Chairman recognizes you.
2. **Make Your Motion**
    a. Speak in a clear and concise manner.
    b. Always state a motion affirmatively. Say, "I move that we ..." rather than, "I move that we do not ...".
    c. Avoid personalities and stay on your subject.
3. **Wait for Someone to Second Your Motion**
4. **Another member will second your motion or the Chairman will call for a second.**
5. **If there is no second to your motion it is lost.**
6. **The Chairman States Your Motion**
    a. The Chairman will say, "It has been moved and seconded that we ..." Thus placing your motion before the membership for consideration and action.
    b. The membership then either debates your motion, or may move directly to a vote.
    c. Once your motion is presented to the membership by the chairman it becomes "assembly property", and cannot be changed by you without the consent of the members.
7. **Expanding on Your Motion**
    a. The time for you to speak in favor of your motion is at this point in time, rather than at the time you present it.
    b. The mover is always allowed to speak first.
    c. All comments and debate must be directed to the chairman.
    d. Keep to the time limit for speaking that has been established.
    e. The mover may speak again only after other speakers are finished, unless called upon by the Chairman.
8. **Putting the Question to the Membership**
    a. The Chairman asks, "Are you ready to vote on the question?"
    b. If there is no more discussion, a vote is taken.
    c. On a motion to move the previous question may be adapted.

Voting on a Motion:

The method of vote on any motion depends on the situation and the by-laws of policy of your organization. There are five methods used to vote by most organizations, they are:

1. **By Voice** -- The Chairman asks those in favor to say, "aye", those opposed to say "no". Any member may move for an exact count.
2. **By Roll Call** -- Each member answers "yes" or "no" as his name is called. This method is used when a record of each person's vote is required.
3. **By General Consent** -- When a motion is not likely to be opposed, the Chairman says, "if there is no objection ..." The membership shows agreement by their silence, however if one member says, "I object," the item must be put to a vote.
4. **By Division** -- This is a slight verification of a voice vote. It does not require a count unless the chairman so desires. Members raise their hands or stand.
5. **By Ballot** -- Members write their vote on a slip of paper; this method is used when secrecy is desired.

There are two other motions that are commonly used that relate to voting.

1. **Motion to Table** -- This motion is often used in the attempt to "kill" a motion. The option is always present, however, to "take from the table", for reconsideration by the membership.
2. **Motion to Postpone Indefinitely** -- This is often used as a means of parliamentary strategy and allows opponents of motion to test their strength without an actual vote being taken. Also, debate is once again open on the main motion.

Parliamentary Procedure is the best way to get things done at your meetings. But, it will only work if you use it properly.

1. Allow motions that are in order.
2. Have members obtain the floor properly.
3. Speak clearly and concisely.
4. Obey the rules of debate.
   Most importantly, *BE COURTEOUS*.

Robert's Rules of Order Motions Chart

Based on *Robert's Rules of Order Newly Revised (10th Edition)*

Part 1, Main Motions. These motions are listed in order of precedence. A motion can be introduced if it is higher on the chart than the pending motion. **§** indicates the section from Robert's Rules.

§	PURPOSE:	YOU SAY:	INTERRUPT?	2ND?	DEBATE?	AMEND?	VOTE?
§21	Close meeting	I move to adjourn	No	Yes	No	No	Majority
§20	Take break	I move to recess for ...	No	Yes	No	Yes	Majority
§19	Register complaint	I rise to a question of privilege	Yes	No	No	No	None
§18	Make follow agenda	I call for the orders of the day	Yes	No	No	No	None
§17	Lay aside temporarily	I move to lay the question on the table	No	Yes	No	No	Majority
§16	Close debate	I move the previous question	No	Yes	No	No	2/3
§15	Limit or extend debate	I move that debate be limited to ...	No	Yes	No	Yes	2/3
§14	Postpone to a certain time	I move to postpone the motion to ...	No	Yes	Yes	Yes	Majority
§13	Refer to committee	I move to refer the motion to ...	No	Yes	Yes	Yes	Majority
§12	Modify wording of motion	I move to amend the motion by ...	No	Yes	Yes	Yes	Majority
§11	Kill main motion	I move that the motion be postponed indefinitely	No	Yes	Yes	No	Majority
§10	Bring business before assembly (a main motion)	I move that [or "to"] ...	No	Yes	Yes	Yes	Majority

Part 2, Incidental Motions. No order of precedence. These motions arise incidentally and are decided immediately.

§	PURPOSE:	YOU SAY:	INTERRUPT?	2ND?	DEBATE?	AMEND?	VOTE?
§23	Enforce rules	Point of Order	Yes	No	No	No	None
§24	Submit matter to assembly	I appeal from the decision of the chair	Yes	Yes	Varies	No	Majority
§25	Suspend rules	I move to suspend the rules	No	Yes	No	No	2/3
§26	Avoid main motion altogether	I object to the consideration of the question	Yes	No	No	No	2/3
§27	Divide motion	I move to divide the question	No	Yes	No	Yes	Majority
§29	Demand a rising vote	I move for a rising vote	Yes	No	No	No	None
§33	Parliamentary law question	Parliamentary inquiry	Yes	No	No	No	None
§33	Request for information	Point of information	Yes	No	No	No	None

Part 3, Motions That Bring a Question Again Before the Assembly.
No order of precedence. Introduce only when nothing else is pending.

§	PURPOSE:	YOU SAY:	INTERRUPT?	2ND?	DEBATE?	AMEND?	VOTE?
§34	Take matter from table	I move to take from the table ...	No	Yes	No	No	Majority
§35	Cancel previous action	I move to rescind ...	No	Yes	Yes	Yes	2/3 or Majority with notice
§37	Reconsider motion	I move to reconsider ...	No	Yes	Varies	No	Majority

From www.robertsrules.org, August 2007

Robert's Rules of Order in 7 Easy Steps

1. Only one subject (motion) may be before the group at one time
Motions should be made during appropriate times, such as after a presentation, or during new business. Exception: Multiple subjects may be raised during an informal brainstorming session that precedes a formal motion.

2. Seconding the motion
If a motion does not get a second, the motion dies. If a friendly amendment is made to the motion, the mover of the original motion decides whether to accept the amendment. Any motion, amended or not, must have a second, prior to discussion of the motion.

3. Speaking order
The mover of the motion speaks first ... and last.

4. Speakers rights
Each item presented for consideration is entitled to full and free debate. All members have equal rights.

5. Majority Rules
After a motion is discussed, someone can make the motion to "call the motion" or vote on it. It can also be voted on to "table the motion," or postpone discussion. The rights of the minority must be preserved, but the will of the majority must be carried out.

6. Re-opening subjects (motions) already discussed
After a vote has been taken on a motion, someone who voted with the majority on the underlying vote can make the motion to re-open the subject. It requires a two thirds vote of the members present to re-open a subject.

7. Quorum
A majority of the membership constitutes a quorum. Meetings may be held to discuss issues with an absence of a quorum, but motions will be held until the next meeting that achieves a quorum.

From, http://www.crimnet.state.mn.us/docs/DM-CondensedRobertsRules.pdf, August 2011

For More Survival Tips on Robert's Rules of Order

See http://roberts-rules.com/

Survival Tips on
Robert's Rules of Order

Before the Motion

1. Bylaws - Best Advice
2. The Agenda
3. Unfinished Business vs Old Business
4. Entitled to be Heard
5. Totally Wrong Phrases
6. Unanimous Consent
7. Meeting vs Session
8. Using the 6 Steps to Get Your Way
9. Notice and the Vote (4/6/11)

After the Motion

20. Counting Votes; Voting Results
21. 2/3 Vote vs Majority
22. Motions Adopted, Yet Still Not Final
23. Rescind, Repeal, Annul

During the Motion

10. 6 Steps to Each Motion
11. Some General Exceptions
12. When the 6 Steps Do Not Apply
13. 4 Motions Always Out of Order
14. 5 Ways to Modify a Motion
15. 3 Ways to Amend a Motion
16. Unamendable Motions
17. Undebatable Motions
18. Do Not Interrupt
19. Suspend the Rules (4/6/11)

Some California Code

California Brown Act CC 54950, et seq.
Davis-Stirling Common Interest Dev. Act CC 1350, et seq.

CONDUCTING THE PUBLIC'S BUSINESS IN PUBLIC

A guide to South Dakota's Open Meetings Law

(Revised Fall 2015)

Prepared by representatives of the:

S.D. Attorney General's Office
S.D. Municipal League
Associated School Boards of S.D.
S.D. Association of County Commissioners
S.D. Association of County Officials
S.D. Newspaper Association
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WHAT IS SOUTH DAKOTA'S OPEN MEETINGS LAW?

South Dakota's open meetings law embodies the principle that the public is entitled to the greatest possible information about public affairs and is intended to encourage public participation in government. SDCL 1-25-1 requires that official meetings of public bodies must be public and notice is to be given of such meetings 24 hours in advance of the meetings. While the open meetings law does not define "official meeting," specific statutes relating to cities, townships, counties, and school districts define what constitutes an official meeting. In addition, the attorney general takes the position that a meeting must be open to the public if:

1) A legal quorum of the public body is present at the same place at the same time; and
2) Official business, meaning any matter relating to the activities of the entity, is discussed.

Openness in government is encouraged.

WHO DOES THE OPEN MEETINGS LAW APPLY TO?

The open meetings law applies to all public bodies "of the state or its political subdivisions" that exercise "sovereign power derived from state law." SDCL 1-25-1. This includes cities, counties, school boards and other public bodies created by ordinance or resolution, such as appointed boards, task forces, and committees, so long as they have authority to actually exercise sovereign power. Although no court decisions have been issued on the subject, this probably does not include bodies that are not created by statute, ordinance or resolution or that serve only in an advisory capacity. The state Constitution allows the Legislature and the Unified Judicial System to create rules regarding their own separate functions.

ARE TELECONFERENCES CONSIDERED PUBLIC MEETINGS?

Yes. The open meetings law allows meetings, including executive or closed meetings, to be conducted by teleconference – an information exchange by audio or video – if a place is provided for the public to participate by speaker phone. In addition, for teleconferences where less than a quorum is present at the location open to the public, arrangements must also be made for the public to listen by telephone or internet (except for portions of meetings properly closed for executive sessions). The media and public must be notified of teleconference meetings under the same notice requirements as any other meeting. All votes shall be taken by roll call.

HOW ARE THE PUBLIC AND MEDIA NOTIFIED WHEN PUBLIC BUSINESS IS BEING DISCUSSED?

SDCL 1-25-1.1 requires that all public bodies prominently post a notice and copy of the proposed agenda at the public body's principal office. At a minimum, the proposed agenda must include the date, time, and location of the meeting and must be visible, readable, and accessible to the public for 24 continuous hours immediately preceding the meeting. Also, if the public body has its own website, the notice must be posted on the public body's website upon dissemination of the notice. For special or rescheduled meetings, public bodies must comply with the regular meeting notice requirements as much as circumstances permit. The notice must be delivered in person, by mail, by email, or by telephone to all local news media who have asked to be notified. It is good practice for local media to renew requests for notification of special or rescheduled meetings at least annually.

WHO ARE LOCAL NEWS MEDIA?

There is no definition of "local news media" in SDCL ch. 1-25. "News media" is defined in SDCL 13-1-57 generally as those personnel of a newspaper, periodical, news service, radio station, or television station regardless of the medium through which their content is delivered. The Attorney General is of the opinion that "local news media" is all news media – broadcast and print – that regularly carry news to the community.

WHEN CAN A MEETING BE CLOSED TO THE PUBLIC AND MEDIA?

SDCL 1-25-2 allows a public body to close a meeting for the following purposes: 1) to discuss personnel issues pertaining to officers or employees; 2) consideration of the performance or discipline of a student, or the student's participation in interscholastic activities; 3) consulting with or reviewing communications from legal counsel about proposed or pending litigation or contractual matters; 4) employee contract negotiations; or 5) to discuss marketing or pricing strategies of a publicly-owned competitive business.

The statute also recognizes that executive session may be appropriate to comport with other laws that require confidentiality or permit executive or closed meetings. Federal law pertaining to students and medical records will also cause school districts and other entities to conduct executive sessions or conduct meetings so as to refrain from releasing confidential information. Meetings may also be closed by cities and counties for certain economic development matters. SDCL 9-34-19.

Note that SDCL 1-25-2 and SDCL 9-34-19 do not require meetings be closed in any of these circumstances.

Any official action based on discussions in executive session must, however, be made at an open meeting.

WHAT IS THE PROPER PROCEDURE FOR EXECUTIVE SESSIONS?

Motions for executive sessions must refer to the specific state law allowing for the executive session i.e. "pursuant to SDCL 1-25-2(3)." Also, best practice to avoid public confusion would be that public bodies explain the reason for going into executive session. For example, the motion might state "motion to go into executive session pursuant to SDCL 1-25-2(1) for the purposes of discussing a personnel matter," or "motion to go into executive session pursuant to SDCL 1-25-2(3) for the purposes of consulting with legal counsel."

Discussion in the executive session must be strictly limited to the announced subject. No official votes may be taken on any matter during an executive session. The public body must return to open session before any official action can be taken.

Board members could be held personally liable for the results of an official vote taken illegally during an executive session. For example, a contract approved only during an executive session could be found void and the board members could be required to repay any public funds spent under the contract.

WHAT HAPPENS IF THE MEDIA OR PUBLIC IS IMPROPERLY EXCLUDED FROM A MEETING OR OTHER VIOLATIONS OF THE OPEN MEETING LAW OCCUR?

Excluding the media or public from a meeting that has not been properly closed subjects the public body or the members involved to (a) prosecution as a Class 2 misdemeanor punishable by a maximum sentence of 30 days in jail, a $500 fine or both or (b) a reprimand by the Open Meeting Commission ("OMC"). The same penalties apply if the agenda for the meeting is not properly posted or other open meeting violations occur.

Also, action taken during any meeting that is not open or has not been properly noticed could, if challenged, be declared null and void. It could even result in personal liability for members of the governing body involved, depending upon the action taken.

HOW ARE ISSUES REFERRED TO THE OPEN MEETINGS COMMISSION ("OMC")?

Persons alleging violations of the open meetings laws must make their complaints with law enforcement officials in the county where the offense occurred. After a signed notarized complaint is made under oath, and any necessary investigation is conducted, the State's Attorney may (a) prosecute the case as a misdemeanor, (b) find that the matter has no merits and file a report with the Attorney General for statistical purposes or (c) forward the complaint to the OMC for a determination. The OMC is comprised of five State's Attorneys appointed by the Attorney General. The OMC examines whether a violation has occurred and makes written public findings explaining its reasons. If you have questions on the procedures or status of a pending case, you may contact the Attorney General's Office at 605-773-3215 to talk to an assistant for the OMC. Procedures for the OMC are posted on the website for the Office of Attorney General. http://atg.sd.gov/

WHAT DOES THE TERM "SOVEREIGN POWER" MEAN?

The open meetings law does not define this term, but it generally means the power to levy taxes,

impose penalties, make special assessments, create ordinances, abate nuisances, regulate the conduct of others, or perform other traditional government functions. The term may include the exercise of many other governmental functions. If an entity is unclear whether it is exercising "sovereign power" it should consult with legal counsel.

MAY AGENDA ITEMS BE CONSIDERED IF THEY ARE ADDED LESS THAN 24 HOURS BEFORE A MEETING?

Proposed agendas for public meetings must be posted at least 24 hours in advance of the meeting. The purpose of providing advance notice of the topics to be discussed at a meeting is to provide information to interested members of the public concerning the governing body's anticipated business. Typically the public body adopts the final agenda upon convening the meeting. At this time, the governing body may add or delete agenda items and may also change the order of business. In 2012, the South Dakota Supreme Court affirmed a South Dakota Circuit Court decision which held that a preliminary agenda may be amended when the board takes action to formally adopt the meeting agenda. See Molden v. Grant-Deuel School Dist. 25-3, Order Directing Issuance of Judgment of Affirmance, So. Dak. Sup. Ct. # 26325, October 9, 2012. New items cannot be added after the agenda has been adopted by the governing body. Public bodies are strongly encouraged to provide 24 hours notice of all agenda items so as to be fair to the public and to avoid dispute.

For special or rescheduled meetings, public bodies are to comply to the extent circumstances permit. In other words, posting less than 24 hours in advance may be permissible in emergencies.

ARE EMAIL DISCUSSIONS "MEETINGS" FOR PURPOSES OF THIS LAW?

Courts in some states have held that contemporaneous email communications among a quorum of the governing members of a public body constitute a "meeting" of the public body when the members discuss the merits of pending issues. Email participation in scheduling or similar activity would not, under this analysis, constitute a public meeting. For additional reference see Wood v. Battle Ground School District, 27 P.3d 1208 (Wash. 2001); 2008 N.D. Op. Atty. Gen. 0-22.

WHAT RECORDS MUST BE AVAILABLE TO THE PUBLIC IN CONJUNCTION WITH PUBLIC MEETINGS?

There are a number of state laws pertaining to public records (SDCL ch. 1-27). Some are specific to records of meetings. For example, SDCL 1-27-1.17 requires that draft minutes of public meetings must be made available to the public at the principal place of business for the public body within 10 business days after the meeting (or made available on the website for the public body within five business days).

Another law provides that meeting packets or materials given out to members of a public body must also be made available to the public when provided to the public body, but this law also contains various exemptions. These laws are in addition to any specific requirements for public bodies (i.e., publication requirements in state laws pertaining to cities, counties, or school districts). Enforcement of these public records law are handled by separate procedures in SDCL 1-27-35, et.seq. rather than the open meeting procedures described above. Violations of SDCL 1-27-1.16 and 1-27-1.17 are also Class 2 misdemeanors.

WHAT REQUIREMENTS APPLY TO TASK FORCES, COMMITTEES AND WORKING GROUPS?

Task forces and committees that exercise "sovereign power" and are created by statute, ordinance, or proclamation are required to comply with the open meetings law. SDCL 1-25-1. Task forces, committees, and working groups that are not created by statute, ordinance, or proclamation, or are advisory only may not be subject to the open meetings law, but are encouraged to comply to the extent possible when public matters are discussed. Ultimately, if such advisory task forces, committees and working groups present any reports or recommendations to public bodies, the public bodies must wait until the next meeting (or later) before taking final action on the recommendations. SDCL 1-27-1.18.

PERTINENT S.D. OPEN MEETINGS STATUTES

(other specific provisions may apply depending on the public body involved)

1-25-1. OPEN MEETINGS. The official meetings of the state, its political subdivisions, and any public body of the state or its political subdivisions are open to the public unless a specific law is cited by the state, the political subdivision, or the public body to close the official meeting to the public. For the purposes of this section, a political subdivision or a public body of a political subdivision means any association, authority, board, commission, committee, council, task force, school district, county, city, town, township, or other agency of the state, which is created or appointed by statute, ordinance, or resolution and is vested with the authority to exercise any sovereign power derived from state law.

It is not an official meeting of one political subdivision or public body if its members provide information or attend the official meeting of another political subdivision or public body for which the notice requirements of § 1-25-1.1 have been met.

Any official meeting may be conducted by teleconference as defined in § 1-25-1.2. A teleconference may be used to conduct a hearing or take final disposition regarding an administrative rule pursuant to § 1-26-4. A member is deemed present if the member answers present to the roll call conducted by teleconference for the purpose of determining a quorum. Each vote at an official meeting held by teleconference shall be taken by roll call.

If the state, a political subdivision, or a public body conducts an official meeting by teleconference, the state, the political subdivision, or public body shall provide one or more places at which the public may listen to and participate in the teleconference meeting. For any official meeting held by teleconference, which has less than a quorum of the members of the public body participating in the meeting who are present at the location open to the public, arrangements shall be provided for the public to listen to the meeting via telephone or internet. The requirement to provide one or more places for the public to listen to the teleconference does not apply to an executive or closed meeting.

If a quorum of township supervisors, road district trustees, or trustees for a municipality of the third class meet solely for purposes of implementing previously publicly-adopted policy, carrying out ministerial functions of that township, district, or municipality, or undertaking a factual investigation of conditions related to public safety, the meeting is not subject to the provisions of this chapter. A violation of this section is a Class 2 misdemeanor.

1-25-1.1. PUBLIC NOTICE. All public bodies shall provide public notice, with proposed agenda, that is visible, readable, and accessible for at least an entire, continuous twenty-four hours immediately preceding any meeting, by posting a copy of the notice, visible to the public, at the principal office of the public body holding the meeting. The proposed agenda shall include the date, time, and location of the meeting. The notice shall also be posted on the public body's website upon dissemination of the notice, if such a website exists. For special or rescheduled meetings, the information in the notice shall be delivered in person, by mail, by email, or by telephone, to members of the local news media, who have requested notice. For special or rescheduled meetings, all public bodies shall also comply with the public notice provisions of this section for regular meetings to the extent that circumstances permit. A violation of this section is a Class 2

misdemeanor.

1-25-1.2. TELECONFERENCE DEFINED. For the purpose of this chapter, a teleconference is information exchanged by audio or video medium.

1-25-2. EXECUTIVE OR CLOSED MEETINGS. Executive or closed meetings may be held for the sole purpose of:

1) Discussing the qualifications, competence, performance, character or fitness of any public officer or employee or prospective public officer or employee. The term "employee" does not include any independent contractors.

2) Discussing the expulsion, suspension, discipline, assignment of or the educational program of a student or the eligibility of a student to participate in interscholastic activities provided by the South Dakota High School Activities Association;

3) Consulting with legal counsel or reviewing communications from legal counsel about proposed or pending litigation or contractual matters;

4) Preparing for contract negotiations or negotiating with employees or employee representatives;

5) Discussing marketing or pricing strategies by a board or commission of a business owned by the state or any of its political subdivisions, where public discussions would be harmful to the competitive position of the business.

However, any official action concerning such matters shall be made at an open official meeting. An executive or closed meeting shall be held only upon a majority vote of the members of such body present and voting, and discussion during the closed meeting is restricted to the purpose specified in the closure motion. Nothing in 1-25-1 or this section may be construed to prevent an executive or closed meeting if the federal or state Constitution or the federal or state statutes require or permit it. A violation of this section is a Class 2 misdemeanor.

9-34-19. EXECUTIVE SESSIONS (MUNICIPAL AND COUNTIES). Any documentary material or data compiled or received by a municipal corporation, county, or an economic development corporation receiving municipal or county funds, for the purpose of furnishing assistance to a business, to the extent that such material or data consists of trade secrets or commercial or financial information regarding the operation of such business, is not a public record. Any discussion or consideration of such trade secrets or commercial or financial information by a municipal corporation or county may be done in executive session closed to the public.

1-25-6. DUTY OF STATE'S ATTORNEY. If a complaint alleging a violation of chapter 1-25 is made pursuant to § 23A-2-1, the state's attorney shall take one of the following actions:

(1) Prosecute the case pursuant to Title 23A;

(2) Determine that there is no merit to prosecuting the case. Upon doing so, the state's attorney shall send a copy of the complaint and any investigation file to the attorney general. The attorney general shall use the information for statistical purposes and may publish abstracts of such information, including the name of the government body involved for purposes of public education; or

(3) Send the complaint and any investigation file to the South Dakota Open Meetings Commission for further action.

1-25-6.1. DUTY OF STATE'S ATTORNEY (COUNTY COMMISSION ISSUES). If a complaint alleges a violation of this chapter by a board of county commissioners, the state's attorney shall take one of the following actions:

(1) Prosecute the case pursuant to Title 23A;

(2) Determine that there is no merit to prosecuting the case. The attorney general shall use the information for statistical purposes and may publish abstracts of the information as provided by § 1-25-6;

(3) Send the complaint and any investigation file to the South Dakota Open Meetings Commission for further action; or

(4) Refer the complaint to another state's attorney or to the attorney general for action pursuant to § 1-25-6.

1-25-7. REFERRAL TO OMC. Upon receiving a referral from a state's attorney or the attorney general, the South Dakota Open Meetings Commission shall examine the complaint and investigatory file submitted by the state's attorney or the attorney general and shall also consider signed written submissions by the persons or entities that are directly involved. Based on the investigatory file submitted by the state's attorney or the attorney general and any written responses, the commission shall issue a written determination on

whether the conduct violates this chapter, including a statement of the reasons therefor and findings of fact on each issue and conclusions of law necessary for the proposed decision. The final decision shall be made by a majority of the commission members, with each member's vote set forth in the written decision. The final decision shall be filed with the attorney general and shall be provided to the public entity and or public officer involved, the state's attorney, and any person that has made a written request for such determinations. If the commission finds a violation of this chapter, the commission shall issue a public reprimand to the offending official or governmental entity. However, no violation found by the commission may be subsequently prosecuted by the state's attorney or the attorney general. All findings and public censures of the commission shall be public records pursuant to § 1-27-1. Sections 1-25-6 to 1-25-9, inclusive, are not subject to the provisions of chapter 1-26.

1-25-8. OMC MEMBERS. The South Dakota Open Meeting Commission shall be comprised of five state's attorneys appointed by the attorney general. Each commissioner shall serve at the pleasure of the attorney general. A chair of the commission shall be chosen annually from the membership of the commission by a majority of its members.

1-25-9. OMC CONFLICTS. No member of the commission may participate as part of the commission or vote on any action regarding a violation of this chapter if that member reported or was involved in the initial investigation, is an attorney for anyone who reported or was involved in the initial investigation, or represents or serves as a member of the governmental entity about whom the referral is made. The provisions of this section do not preclude a commission member from otherwise serving on the commission for other matters referred to the commission.

1-27-1.16. MEETING PACKETS AND MATERIALS. If a meeting is required to be open to the public pursuant to § 1-25-1 and if any printed material relating to an agenda item of the meeting is prepared or distributed by or at the direction of the governing body or any of its employees and the printed material is distributed before the meeting to all members of the governing body, the material shall either be posted on the governing body's website or made available at the official business office of the governing body at least twenty-four hours prior to the meeting or at the time the material is distributed to the governing body, whichever is later. If the material is not posted to the governing body's website, at least one copy of the printed material shall be available in the meeting room for inspection by any person while the governing body is considering the printed material. However, the provisions of this section do not apply to any printed material or record that is specifically exempt from disclosure under the provisions of this chapter or to any printed material or record regarding the agenda item of an executive or closed meeting held in accordance with § 1-25-2. A violation of this section is a Class 2 misdemeanor. However, the provisions of this section do not apply to printed material, records, or exhibits involving contested case proceedings held in accordance with the provisions of chapter 1-26.

1-27-1.17. DRAFT MINUTES. The unapproved, draft minutes of any public meeting held pursuant to § 1-25-1 that are required to be kept by law shall be available for inspection by any person within ten business days after the meeting. However, this section does not apply if an audio or video recording of the meeting is available to the public on the governing body's website within five business days after the meeting. A violation of this section is a Class 2 misdemeanor. However, the provisions of this section do not apply to draft minutes of contested case proceedings held in accordance with the provisions of chapter 1-26.

1-27-1.18. WORKING GROUP REPORTS. Any final recommendations, findings, or reports that result from a meeting of a committee, subcommittee, task force, or other working group which does not meet the definition of a political subdivision or public body pursuant to § 1-25-1, but was appointed by the governing body, shall be reported in open meeting to the governing body which appointed the committee, subcommittee, task force, or other working group. The governing body shall delay taking any official action on the recommendations, findings, or reports until the next meeting of the governing body.

DSS

Strong Families - South Dakota's Foundation and Our Future

Department of Social Services Boards & Commissions Meeting Guidelines

It is the expectation of the Department of Social Services that public information and meeting materials for board and commission meetings be transparent, timely and accurate.

State of South Dakota
Department of Social Services
700 Governors Drive
Pierre, SD 57501
Phone: (605)773-3165
Fax: (605)773-4855
04/20/2018

Contents

What is South Dakota Open Meetings Law?

South Dakota Open Meetings Law embodies the principle that the public is entitled to the greatest possible information about public affairs and is intended to encourage public participation in government. SDCL 1-25 requires that official meetings of public bodies must be public and noticed in advance of the meetings.

While the open meetings law does not define "official meeting," specific statutes relating to cities, townships, counties, and school districts define what constitutes an official meeting. The State of South Dakota Office of the Attorney General also takes the position that a meeting must be open to the public if:

1) A legal quorum of the public body is present at the same place at the same time; and
2) Official business, meaning any matter relating to the activities of the entity, is discussed.

Who Does the Open Meetings Law Apply To?

South Dakota Open Meetings Law applies to all public bodies "of the state or its political subdivisions" that exercise "sovereign power derived from state law." This includes cities, counties, school boards and other public bodies created by ordinance or resolution, such as appointed boards, task forces, and committees, so long as they have authority to actually exercise sovereign power.

Open Meetings

In-person Meetings

In addition to statutory requirements, the Department of Social Services is fully committed to transparency and would like to provide some additional information regarding public accessibility of official board meetings. DSS requires in-person meetings to be accessible both in person and via telephone (as a minimum method) or via the internet or web-meeting.

Boards and Commissions can facilitate these meetings using a variety of methods including:

1) Utilizing tools like Skype or Livestream which may still require a phone line; OR
2) Establishing a dial in number or conference line for people to participate by phone.

Meeting notices and agendas should clearly indicate how interested persons can arrange for meeting access via telephone. How to dial in to the meeting, or who to call for the RSVP process, should be clearly stated in the same place in the notice or agenda as meeting location information.

Teleconferences

Teleconference meetings are allowed. These meetings can be an information exchange conducted by audio or video if a place is provided for the public to participate by phone. If less than a quorum is present at the location open to the public, arrangements must be made for the public to listen by telephone or internet. The public must be notified of teleconference meetings under the same notice requirements as any other meeting. Members are deemed in attendance if the member answers present to the roll call for the purpose of determining a quorum. All votes shall be taken by roll call.

Meetings Closed to the Public

Executive Sessions

The requirement to provide one or more places for the public to listen to the teleconference does not apply to an executive or closed meeting. Executive or closed meetings may be held for the sole purposes of:

1) Discussing personnel issues pertaining to officers or employees;
2) Consideration of the performance or discipline of a student, or the student's participation in interscholastic activities;
3) Consulting with or reviewing communications from legal counsel about proposed or pending litigation or contractual matters;
4) Employee contract negotiations; or
5) To discuss marketing or pricing strategies of a publicly-owned competitive business.

The statute also recognizes that executive session may be appropriate to comport with other laws that require confidentiality or permit executive or closed meetings.

Procedure for Executive Sessions

Motions for executive sessions must refer to the specific state law allowing for the executive session (e.g. "pursuant to SDCL 1-25-2(3)). To avoid public confusion a best practice would be for a board to explain the reason for going into executive session. An example would be: "Motion to go into executive session pursuant to SDCL 1-25-2(1) for the purpose of discussing a personnel matter," or "Motion to go into executive session pursuant to SDCL 1-25-2(3) for the purpose of consulting with legal counsel." Executive session discussion must be strictly limited to the announced subject. No official votes may be taken on any matter during an executive session. The public body must return to open session before any official action can be taken.

Meeting Notices

SDCL 1-25-1.3 Notice of meetings of the state and its boards, commissions, and departments shall provide public notice of a meeting by posting a copy of the proposed agenda at the principal office of the board, commission, or department holding the meeting. The proposed agenda shall include the date, time, and location of

the meeting; it must be visible, readable, and accessible to the public. The Department of Social Services values public input. Effective July 1, 2018, and in accordance with SDCL 1-25-1, the chair of the board shall reserve a period for public comment during each meeting. The agenda shall be posted at least three business days before the meeting is scheduled to start according to the agenda. 3 business days does not include the day the agenda is posted, Saturdays, Sundays, or legal holidays.

The Department of Social Services will post all meeting notices to the South Dakota Boards and Commissions Portal at http://boardsandcommissions.sd.gov/. To meet meeting notice requirements, meeting notices must be submitted electronically to the following email address: DSSBoards&Commissions@state.sd.us 48 hours before the notice must be posted.

The public must be notified of teleconference meetings under the same notice requirements as any other meeting. All votes shall be taken by roll call.

Sample Meeting Timeline

Scheduled meeting date	Monday, May 22, 2017
Date to post the agenda / notice	Tuesday, May 16, 2017
Date to post meeting documents if available	Tuesday, May 16, 2017
Date to post approved agenda & *draft minutes	Tuesday, June 6, 2017

*Approved minutes are posted the day following the meeting they were accepted as final.

Posting Meeting Documents

SDCL 1-25-1.4 State boards, commissions, or departments required to provide public notice shall make the notice available on a state website designated by the commissioner of the Bureau of Finance and Management, if the information exists:

1. Financial statements;
2. Audit reports;
3. A list of the members of the board or commission;
4. A schedule of future meetings;
5. Public meeting materials that are available before a public meeting;
6. Meeting minutes; and
7. Annual reports

The Department of Social Services will post all required information to the South Dakota Boards and Commissions Portal at http://boardsandcommissions.sd.gov. Required documents must be submitted electronically to the following email address: DSSBoards&Commissions@state.sd.us.

Meeting Agenda
Name of Board, Commission or Advisory Council
Building/Location, City, SD Zip Code
Month Day, Year
Time AM/PM to Time AM/PM (Time Zone)

Call In Number: (605-XXX-XXXX)
Access Code: (XXXXXXX)

Member Listing

1. <Member Name>
2. <Member Name>
3. <Member Name>
4. <Member Name>
6. <Member Name>
7. <Member Name>
8. <Member Name>
9. <Member Name>

Others in attendance:

Purpose: Summary statement of the Board, Commission or Advisory Council (shall be to guide or advise the ...)

	When	Agenda Item	Who
1.	<Time>	Call to Order/Welcome and Introductions	<Name>
2.	<Time>	Roll Call	<Name>
3.	<Time>	Approval of Agenda	<Name>
4.	<Time>	Approval of Minutes	<Name>
5.	<Time>	Action Item	<Name>
6.	<Time>	Action Item	<Name>
7.	<Time>	Executive Session	<Name>
8.	<Time>	Other business	<Name>
9.	<Time>	Public Testimony/Public Comment Period	<Name>
10.	<Time>	Set Next Meeting Date	<Name>
11.	<Time>	Adjourn	<Name>

Individuals requiring assistive technology or other services in order to participate in the meeting should submit a request to <Contact Person> by phone or email at least **1 day prior to the meeting** in order to make accommodations available.

Taking Meeting Minutes

State of South Dakota Bureau of Human Resources offers a 2.5 hour class on the art of taking meeting minutes for a nominal fee. The course covers subjects such as preparing to take minutes, the scope and focus of minutes, how to take minutes at a board meeting, recording action items, transcribing minutes, administrative duties and accountability.

Draft Minutes

SDCL 1-27-1.17 Draft minutes of public meeting to be available--Exceptions--Violation as misdemeanor. The unapproved, draft minutes of any public meeting held pursuant to § 1-25-1 that are required to be kept by law shall be available for inspection by any person within ten business days after the meeting. However, this section does not apply if an audio or video recording of the meeting is available to the public on the governing body's website within five business days after the meeting. A violation of this section is a Class 2 misdemeanor. However, the provisions of this section do not apply to draft minutes of contested case proceedings held in accordance with the provisions of Chapter 1-26.

The Department of Social Services will post all meeting minutes to the South Dakota Boards and Commissions Portal at http://boardsandcommissions.sd.gov. To meet meeting minute requirements, draft minutes must be submitted electronically within 9 days after the meeting to the following email address: DSSBoards@Commissions@state.sd.us.

Meeting Minutes Example

Meeting Minutes
Name of Board, Commission or Advisory Council
Building/Location, City, SD Zip Code
Month Day, Year
Time AM/PM to Time AM/PM (CST) / (MST)

Call Information:
Call In Number: (605-XXX-XXXX)
Access Code: (XXXXXXX)

Members Present:

Members Absent:

DSS Staff Present:

Others in Attendance:

Purpose: Summary statement of the Board, Commission or Advisory Council (The purpose of the board shall be to guide or advise the ...)

I. **Call to Order/Welcome and Introductions** <Name>
<Member Name> called the meeting to order at <Time> <AM/PM> and welcomed members to the meeting.

II. **Roll Call** <Name>
<Member Name> called the roll. A quorum was present.

III. **Approval of Agenda** <Name>
<Member Name> made a motion to approve the meeting agenda.
<Member Name> seconded the motion. **MOTION PASSED.**

IV. **Approval of Minutes** <Name>
<Member Name> made a motion to approve the <Date> meeting minutes.
<Member Name> seconded the motion. **MOTION PASSED.**

V. **Action Item** <Name>

VI. **Action Item** <Name>

VII. **Executive Session** <Name>
<Member Name> made a motion to go into executive session pursuant to SDCL 1-25-2(1) for the purpose of discussing a personnel matter. **OR**
<Member Name> made a motion to go into executive session pursuant to

SDCL 1-25-2(3) for the purpose of consulting with legal counsel. **MOTION PASSED.**

VIII. **Public Testimony/Public Comment Period** <Name>

IX. **Set Next Meeting Date** <Name>

X. **Adjourn** <Name>

<Member Name> made a motion to adjourn the meeting at <Time> <AM/PM>. <Member Name> seconded the motion. **MOTION PASSED.**

Meeting Adjourned at (Time of day AM/PM).

Disclaimer

The information contained in this document is provided as a quick reference guide, intended to help DSS boards and commissions comply with open public meeting requirements; it is exemplary in nature and is not intended to be comprehensive.

#17

Psychologist Examiners Board
Carol Tellinghuisen, Executive Secretary
810 N. Main St. Suite 298 Spearfish, SD 57783
Phone: 605.642.1600 Fax: 605.722.1006
Email: proflic@rushmore.com

Attn: Oral Examination

To Whom It May Concern,

I am an approved applicant for the licensure of Psychology in the State of South Dakota. I have completed all required paperwork and supervised hours with the exception of the written and oral examinations. I am planning to take the Examination of the Professional Practice of Psychology written exam at the beginning of October. I had planned to sit for the oral examination during your October 12, 2018 board meeting. Unfortunately, as is the case with many mental health providers in our state, I also have dual roles of service that require me to be in attendance on October 12th. Because I am not able to be in attendance in person on that date, I am writing to see if the board would consider allowing me to take the oral examinations at another date in the near future. I am willing to work with technology or drive to make an arrangement work. I look forward to being a part of the solution to address the critical shortages of mental health providers in our state and hope that we may work together to find a solution to allow me to sit for the oral examination.